

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 SSO-00 NSCE-00 USIE-00 INRE-00

HEW-02 SCS-03 SCA-01 EB-07 SIL-01 LAB-04 CIAE-00

INR-07 NSAE-00 SS-15 NSC-05 SP-02 L-03 H-02 PRS-01

PA-01 SAJ-01 CPR-01 OMB-01 TRSE-00 /070 W

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FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 2168

INFO USMISSION USBERLIN

AMEMBASSY BERLIN

LIMITED OFFICIAL USE SECTION 01 OF 03 BONN 13280

E.O. 11652: N/A

TAGS: ELAB, SWEL, GW, OVIP (ARENDT, WALTER)

SUBJECT: PROPOSED US-FRG SOCIAL SECURITY AGREEMENT

REF: STATE 192341 (NOTAL)

BEGIN SUMMARY: AFTER HEARING THE PRESENTATION OF THE US POSITION SET OUT IN REFTEL, THE DIRECTOR GENERAL OF THE FONOFF LEGAL DEPARTMENT EXPRESSED APPRECIATION FOR THE CLARIFICATION PROVIDED AND READINESS TO ASSIST IN FINDING A WAY OUT OF THE PROBLEM. HE EXPRESSED A STRONG PERSONAL PREFERENCE FOR OMITTING ANY DEFINITION OF NATIONALITY FROM THE TREATY, BUT SAID THIS WAS NOT UP TO THE FOREIGN OFFICE ALONE AND WOULD HAVE TO BE TAKEN UP WITH THE MINISTRIES OF LABOR AND INTERIOR. GIVEN THE SHORTNESS OF TIME REMAINING, HE THOUGHT IT WOULD BE EXTREMELY DIFFICULT TO PROCEED WITH PLANS FOR A SEPTEMBER 3 SIGNING DATE AND SUGGESTED THAT WE THINK OF TRYING TO FIX A DATE IN OCTOBER. END SUMMARY.

1. AS INSTRUCTED REFTEL, EMBOFFS DISCUSSED THE US
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POSITION ON DEFINITION OF NATIONALITY IN THE PROPOSED

SOCIAL SECURITY AGREEMENT WITH DR. DREHER, DIRECTOR GENERAL FOR LEGAL AFFAIRS IN THE FOREIGN OFFICE, ON AUGUST 15, LEAVING TALKING POINTS DRAWN FROM REFTEL AS A "NON-PAPER" AT THE CONCLUSION. AFTER HEARING THE US PRESENTATION, DR. DREHER, WHO NOTED THAT HE HAD NOT BEEN FAMILAR WITH THE ISSUE UNTIL THE PREVIOUS DAY WHEN WE CALLED FOR THE APPOINTMENT, BEGAN BY EXPRESSING PLEASURE AT THE US REASSURANCE THAT OUR POSITION HAS NO BEARING ON THE POLITICAL QUESTION OF GERMAN NATIONALITY. HE ALSO EXPRESSED APPRECIATION FOR THE FIRM US STAND ON THE NATIONALITY ISSUE IN NEGOTIATIONS WITH THE GDR FOR A CONSULAR CONVENTION. BOTH THE US AND THE FRG, HE OBSERVED, REALIZE THAT THE TREATMENT OF THE QUESTION IN ANY TREATY HAS HIGH POLITICAL IMPORTANCE FOR THE GDR. IN THE 1972 FRG-GDR BASIC TREATY, THE NATIONALITY ISSUE WAS EXPRESSLY NOT TREATED, AND THE EAST GERMANS HAVE BEEN TRYING SUBSEQUENTLY TO RESOLVE IT IN OTHER WAYS, PRIMARILY VIA TREATIES WITH THIRD STATES.

2. DREHER SAW THE ISSUE AS A PROBLEM FOR BOTH OF US AND SAID THAT HE WAS FULLY PREPARED TO ASSIST IN FINDING A WAY OUT. BOTH BECAUSE THE QUESTION WAS NEW TO HIM AND BECAUSE IT IS NOT ONLY UP TO THE FOREIGN OFFICE BUT ALSO TO THE LABOR AND INTERIOR MINISTRIES, HE WAS UNABLE TO OFFER AN IMMEDIATE SOLUTION. THERE WERE, HE SAID, THREE POSSIBILITIES MENTIONED IN THE FILE:

(A) THE SUGGESTION WHICH HE SAID THE FRG EMBASSY HAD REPORTED AS HAVING BEEN MADE BY THE DEPARTMENT THAT WE NOT ONLY AVOID ANY DEFINITION OF "NATIONAL" IN ARTICLE I BUT ALSO REPLACE ANY REFERENCE TO "NATIONAL" THROUGHOUT THE TREATY BY SOME OTHER WORD SUCH AS "INSURED" OR "ENTITLED PERSONS." HE UNDERSTOOD FROM OUR PRESENTATION THAT THE US WAS NOT INSISTING ON THIS PROPOSAL, BUT THE GERMANS WERE NONETHELESS EXPLORING IT AS A POSSIBILITY. IN THEIR TRILATERAL TREATY WITH SPAIN AND FRANCE THEY HAD, IN FACT, USED THE "PERSONS ENTITLED" FORMULATION.

(B) SIMPLE DELETION OF THE DEFINITION "NATIONAL" FROM ARTICLE I. DREHER SAID THAT IN PRINCIPLE HE WOULD PREFER THAT SOLUTION BUT THAT IT ALSO MUST BE CHECKED LIMITED OFFICIAL USE

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OUT BY OTHER COMPETENT MINISTRIES.

(C) REFERENCE TO THE DEFINITION IN THE 1954 FCN TREATY. THE PROBLEM HERE HE SAID, HAD TO DO WITH BERLIN, AND IT WAS NECESSARY TO CHECK CAREFULLY TO BE CERTAIN THAT BERLINERS WOULD BE COVERED IN THE AGREEMENT IF THAT DEFINITION WERE USED. DOCUMENTATION FOR BERLINERS HAS BEEN CHANGED SINCE 1954, AND RATHER THAN THE "HEIMATSCHEN" REFERRED TO IN PARAGRAPH 22 OF THE

FCN PROTOCOL, BERLINERS USE A "PERSONAL AUSWEIS".

3. WE REAFFIRMED THAT SOLUTION (B) WAS CLEARLY THE
US PREFERENCE. WITH REGARD TO SOLUTION (C), WE EXPRESSED
THE PERSONAL OPINION THAT, BETWEEN THE BERLIN CLAUSE
IN THE SOCIAL SECURITY AGREEMENT AND THE FACT THAT
BERLINERS ARE ENTITLED TO HAVE FRG PASSPORTS, WHETHER

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THEY IN FACT DO OR NOT, THE PROBLEM POSED SEEMED MORE
IMAGINARY THAN REAL. DREHER ADMITTED THAT HE WAS NOT
CERTAIN THERE WAS A PROBLEM BUT SAID ONLY THAT IT HAD
TO BE REVIEWED. HE AGAIN REITERATED THAT HE PERSONALLY
WOULD PREFER SIMPLY OMITTING ANY DEFINITION, BUT HAD TO
BE CERTAIN THAT THE LABOR MINISTRY FOUND IT TECHNICALLY
ADEQUATE AND THAT THE INTERIOR MINISTRY COULD ACCEPT IT
POLITICALLY.

4. TURNING TO THE US SUGGESTION THAT WE CONTINUE TO

AIM FOR A SEPTEMBER 3 SIGNING DATE, DREHER FORESAW GREAT DIFFICULTIES, GIVEN THE FACT THAT THE NATIONALITY ISSUE HAD ARISEN SO LATE IN THE NEGOTIATIONS. HE SAID THAT MINISTER ARENDT HAD CANCELLED HIS TRIP NOT ONLY BECAUSE OF THE UNRESOLVED NATIONALITY ISSUE BUT BECAUSE THE FRG EMBASSY HAD REPORTED THAT THE DEPARTMENT HAD AT SOME POINT INDICATED A PREFERENCE FOR POSTPONEMENT BECAUSE OF THE SCHEDULING UNCERTAINTIES ACCOMPANYING THE CHANGE OF SECRETARIES OF HEW. EVEN IF MINISTER LIMITED OFFICIAL USE

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ARENDT HAD NOT MADE OTHER PLANS FOR EARLY SEPTEMBER--A MATTER ON WHICH DREHER WAS NOT INFORMED--HE DOUBTED THAT THE TWO WEEKS LEFT TO US (AT A TIME WHEN MANY POLICY MAKERS ARE ON VACATION) WOULD BE ENOUGH TO COMPLETE THE NECESSARY STUDIES. HE THEREFORE THOUGHT IT WOULD BE MUCH WISER NOW TO THINK IN TERMS OF FINDING A MUTUALLY CONVENIENT DATE IN, SAY, MID- OR LATE-OCTOBER.

5. WE EXPRESSED UNDERSTANDING FOR THE NEED FOR STUDY AND INTERNAL COORDINATION WITHIN THE FRG BUT STRESSED ONCE MORE THE HOPE THAT THE STUDIES WOULD BE UNDERTAKEN ON THE BASIS OF MEETING THE TECHNICAL NEEDS FOR A SMOOTH-WORKING AGREEMENT AND NOT ON THE BASIS OF ANY IMAGINARY POLITICAL CONSIDERATIONS.

6. A SIDE DISCUSSION REVEALED A SIGNIFICANT ERROR IN THE ENGLISH VERSION OF THE DRAFT AGREEMENT. NEAR THE END OF THE MEETING, EMBOFF ASKED ON A PERSONAL BASIS FOR AN EXPLANATION OF HOW THE DEFINITION OF "NATIONAL" AS IT APPEARS IN ARTICLE I (2) WOULD ACTUALLY ASSIST IN MAKING ANY LEGAL DETERMINATIONS OF NATIONALITY. HE NOTED THAT THIS ARTICLE STATES THAT "NATIONAL MEANS... A GERMAN CITIZEN WITHIN THE MEANING OF THE BASIC LAW," WHEREAS ARTICLE 116 OF THE BASIC LAW DOES NOT DEFINE "GERMAN CITIZEN". RATHER, IT DEFINES THE TERM "GERMAN," WHICH INCLUDES "GERMAN CITIZENS" (UNDEFINED) PLUS CERTAIN REFUGEES, ETC., LIVING WITHIN THE 1937 BOUNDARIES OF THE REICH. DREHER REFERRED TO THE GERMAN TEXT OF THE DRAFT AGREEMENT, FROM WHICH IT IS CLEAR THAT THE ENGLISH TEXT SHOULD IN FACT READ: "NATIONAL MEANS...A GERMAN (SIC) WITHIN THE MEANING OF THE BASIC LAW." EMBOFF COMMENTED THAT THIS CLARIFICATION MADE THE TEXT EVEN MORE DIFFICULT FROM THE US POINT OF VIEW.

7. IN CONCLUSION, DREHER SUGGESTED THAT AS A PRACTICAL MATTER WE SHOULD AGREE AS TO WHETHER THE DISCUSSIONS ON THIS MATTER SHOULD BE CONTINUED IN BONN OR IN WASHINGTON. WE ACCEPTED HIS SUGGESTION THAT IT MIGHT

BE PREFERABLE TO HAVE THE NEXT ROUND IN BONN, OBSERVING
THAT THE EMBASSY MIGHT WISH IN THE FUTURE ALSO TO DIS-
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CUSS THE PROBLEM WITH OFFICIALS AT THE MINISTRY OF
INTERIOR IF THAT SEEMED INDICATED. ASKED WHEN US-GDR

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NEGOTIATIONS WOULD RESUME, EMBOFF RESPONDED ON BASIS
OF BERLIN 6114 THAT NO DATE HAD BEEN SET.

8. COMMENT: THE POSITION OUTLINED BY THE DEPARTMENT
WAS WELL RECEIVED, AND WE GAINED THE IMPRESSION THAT
DREHER WILL, IN FACT, TRY TO MOVE THINGS ALONG TO A SATIS-
FACTORY CONCLUSION AS RAPIDLY AS POSSIBLE. HOW RAPIDLY

THAT WILL BE REMAINS TO BE SEEN, HOWEVER. IT IS THE RAISING OF THE NATIONALITY ISSUE THAT BRINGS THE INTERIOR MINISTRY (WHICH HAS PRIMARY RESPONSIBILITY FOR ALL QUESTIONS OF NATIONALITY) INTO THE PICTURE, AND OTHER CONTACTS HAVE TOLD US THAT THE US POSITION ALSO RAISES A CONSTITUTIONAL ISSUE WHICH WILL REQUIRE THE INVOLVEMENT OF THE JUSTICE MINISTRY. DREHER'S LOW-KEY REFERENCE TO THE IMPORTANCE WHICH THE GDR ATTACHES TO TREATIES OF THIS SORT WAS PROBABLY A CLUE TO THE NATURE OF THE PROBLEM WE ARE FACING: THE FRG FEARS THAT, IF AFTER A WHOLE SERIES OF SIMILAR TREATIES THE ONE WITH ITS MAJOR ALLY, THE US, DOES NOT INCLUDE THE LIMITED OFFICIAL USE

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STANDARD NATIONALITY FORMULATION, THE GDR IS LIKELY TO READ CONSIDERABLE SIGNIFICANCE INTO THAT FACT.

9. WHILE WE HOPE THAT DREHER WILL BE ABLE TO BRING ABOUT A PRAGMATIC SOLUTION, WE AGREE WITH HIM THAT IT IS NO LONGER REALISTIC TO THINK OF AN EARLY SEPTEMBER SIGNING DATE. TO KEEP THE BALL MOVING, WE WOULD RECOMMEND THAT THE DEPARTMENT PROPOSE DATES FOR THE SIGNING IN OCTOBER THAT WOULD BE CONVENIENT. DREHER DID NOT REACT TO THE SUGGESTION FOR LEAVING THE ISSUE OPEN FOR A SUBSEQUENT PROTOCOL AND WE DID NOT PRESS, GIVEN HIS INABILITY TO EXPRESS ANY FIRM OPINIONS UNTIL HE HAD UNDERTAKEN INTERAGENCY CONSULTATIONS. CASH

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